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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/721,807

11/25/2003

Thomas M. Floyd JR.

FMC-2

6207

44728 7590 02/09/2007
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EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

02/09/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/721,807

Applicant(s)

FLOYD, THOMAS M.

Examiner

Marc A. Patterson

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 1-3 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>3/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of the species requirement in the reply filed on November 13, 2006 is acknowledged. The traversal is on the ground(s) that bags which are claimed as tubular, and an improvement, and extrusion coated, are not distinct species. This is not found persuasive because tubular shape, extrusion coatings and the addition of a layer of paper as an improvement clearly constitute distinct features which are structural. Applicant also states that within the bag art, all such bags are considered tubular structures; however, the meaning of the phrase 'such bags' is unclear, and it is not clear that all existing bags would be considered tubular. Applicant also states that the coating weight of Claim 4 is consistent with use as an extruded coating, as claimed in Claim 3; however, an extrusion coating is not claimed in Claim 4.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 4 – 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed

invention. The term 'adjacent' in Claim 4 does not appear in the original specification. For purposes of examination, the term will be interpreted to include layers adhered by adhesive, as disclosed in the specification.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al (U.S. Patent No. 7,135,526 B2) in view of Chandler et al (U.S. Patent No. 6,028,160).

With regard to Claim 4, Farley et al disclose a bag (column 26, line 41) comprising nine ply layers (layers; column 25, lines 34 – 35) of a layers 'A' (column 25, line 39) which is a film coating that may be biaxially oriented (column 23, lines 25 – 26); Farley et al disclose that any of the layers can be replaced with a paper ply layer (paper; column 25, line 41), and Farley et al therefore disclose a bag in which the closest, third and fifth layers closest to the inside of the bag comprise paper, and the remaining layers comprise the film coating, and only the outermost ply layer being biaxially oriented; Farley et al therefore disclose a multiple ply bag comprising an inner ply layer comprising a paper having a laminated surface, the surface defining an innermost surface of the multiple ply bag, a second ply layer of an uncoated paper adhered to an uncoated surface of the inner ply and a third ply layer of an uncoated paper positioned between the second ply layer and the fourth ply layer, the fourth ply layer defining a coating and a film layer applied

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to a surface of the coating; each of the 'A' layers comprises a polyethylene (low density polyethylene; column 24, lines 40 – 42). Farley et al fail to disclose a coating having a weight of 5 to 15 lb/ 3000 sq ft.

Chandler et al teach a coating of polyethylene having a weight of 5 to 15 lb/ 3000 sq ft (column 5, lines 66 – 67; column 6, lines 1 – 3) in a bag (sack; column 1, line 20) for the purpose of obtaining a bag that is suitable for protecting metallic articles (column 1, lines 20 – 21). One of ordinary skill in the art would therefore have recognized the advantage of providing for the coating of Chandler et al in Farley et al, which comprises a bag, depending on the desired use of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a coating having a weight of 5 to 15 lb/ 3000 sq ft in Farley et al in order to obtain a bag that is suitable for protecting metallic articles as taught by Chandler et al. The bag disclosed by Farley et al would then have an increased burst resistance and improved tear strength than a comparable four – ply bag without the film layer.

With regard to Claim 6, Farley et al disclose that the 'A' layers comprise polypropylene (column 24, lines 35 – 39) and can be replaced by a metal layer (column 25, lines 39 – 42); Farley et al therefore disclose a metallized film of biaxially oriented polypropylene having a WVTR of 0.01 g/100in²/24hrs or less

6. Claims 5 and 7 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Farley et al (U.S. Patent No. 7,135,526 B2) in view of Chandler et al (U.S. Patent No. 6,028,160) and further in view Rodish (U.S. Patent No. 4,301,961).

Farley et al and Chandler et al disclose a bag comprising paper as discussed above. With regard to Claims 5 and 7 – 8, Farley et al and Chandler et al fail to disclose a paper that is a converter kraft paper having a 35 to 90 lb. basis weight.

Rodish teaches a paper having a 35 to 90 lb. basis weight for a bag, for the purpose of obtaining a bag that is suitable for groceries, that is a converter kraft paper (kraft paper; column 4, lines 6 – 10). One of ordinary skill in the art would therefore have recognized the advantage of providing for the paper of Rodish in Farley et al and Chandler et al, which comprises a bag, depending on the desired use of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for paper that is a converter kraft paper having a 35 to 90 lb. basis weight in Farley et al and Chandler et al in order to obtain a bag that is suitable for groceries as taught by Rodish.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497.

The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Marc Patterson 2/5/07
Marc A. Patterson, PhD.
Primary Examiner
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